

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ALEJANDRO A. DELEON,

Petitioner,

v.

BRYAN D PHILLIPS,

Respondent.

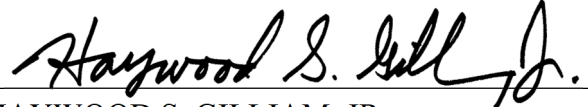
Case No. [23-cv-02965-HSG](#)

**ORDER ADMINISTRATIVELY
CLOSING CASE; DIRECTIONS TO
CLERK**

Petitioner has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dkt. No. 1. The petition appears to be a duplicate of the habeas petition filed *Deleon v. Phillips*, No. C 23-01862 HSG (PR) ("*Deleon I*"), which is still pending. *See Deleon I*, Dkt. No. 1. The Court sent Petitioner a letter dated July 12, 2023, regarding this action and *Deleon I*, asking Petitioner to confirm his intent in filing the petition that commenced this action. Dkt. No. 4. When a *pro se* petitioner files a new petition while an earlier-filed petition is still pending, the district court must construe the new petition as a motion to amend the pending petition rather than as an unauthorized second or successive petition. *Woods v. Carey*, 525 F.3d 886, 887–90 (9th Cir. 2008). Accordingly, the Court orders Petitioner to disregard the July 12, 2023 letter and orders the Clerk to administratively close this case. Because this case was opened in error, the Clerk of the Court shall not charge a filing fee. The Clerk of the Court is directed to construe the initial petition in this action (Dkt. No. 1) as a request for leave to file an amended petition and file both Dkt. No. 1 and a copy of this order in *Deleon v. Phillips*, No. C 23-01862 HSG (PR).

IT IS SO ORDERED.

Dated: July 28, 2023


HAYWOOD S. GILLIAM, JR.
United States District Judge